

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY,	:	
	:	
	:	
	:	
Verified Emergency Petition for a Declaratory	:	
Ruling determining Commonwealth Edison	:	
Company's obligations under the provisions of	:	Docket No. _____
Article IX of the Public Utilities Act, including 220	:	
ILCS 5/9-102, 103, 104, 201, 240 and 241, to pay	:	
under ComEd's Rider 3–Qualified Solid Waste	:	
Energy Facility Purchases to Resource Technology	:	
Corporation for purchases of energy from Resource	:	
Technology Corporation's facility located at 14732	:	
East 2100 North Road, Pontiac, Illinois in quantities	:	
that are in excess of that facility's 10 MW	:	
configured capacity specified in the Commission's	:	
Order in Docket 97-0034 dated October 8, 1997 or	:	
for other relief.	:	

**EMERGENCY MOTION OF
COMMONWEALTH EDISON COMPANY FOR
ISSUANCE OF A DECLARATORY RULING OR OTHER RELIEF**

Commonwealth Edison Company ("ComEd"), by its counsel, pursuant to 83 Ill. Adm. Code § 200.190, submits this Emergency Motion for Issuance of a Declaratory Ruling determining ComEd's obligations under the provisions of Article IX of the Illinois Public Utilities Act (the "Act"), including 220 ILCS 5/9-102, 103, 104, 201, 240 and 241 to pay under ComEd's Rider 3–Qualified Solid Waste Energy Facility Purchases to Resource Technology Corporation ("RTC") for purchases of energy from RTC's facility located at 14732 East 2100 North Road, Pontiac, Illinois ("the Pontiac Facility") in quantities that are in excess of that facility's 10 MW configured capacity specified in the Commission's Order in Docket 97-0034 dated October 8, 1997, or for such other type and manner of relief as the Commission deems

appropriate clarifying ComEd's obligation to pay under Rider 3 for energy generated at the Pontiac Facility in excess of 10 MW. In support of its Motion, ComEd states as follows:

1. On July 5, 2002, ComEd filed its Verified Emergency Petition For A Declaratory Ruling determining ComEd's obligations under the provisions of Article IX of the Public Utilities Act, including 220 ILCS 5/9-102, 103, 104, 201, 240 and 241 to pay the so-called "Retail Rate" under ComEd's Rider 3—Qualified Solid Waste Energy Facility Purchases to RTC for purchases of energy from RTC's Pontiac Facility in quantities that are in excess of that facility's 10 MW configured capacity specified in the Commission's Order in Docket 97-0034 dated October 8, 1997, or for such other relief clarifying ComEd's obligations.

2. On July 2, 2002, RTC requested and obtained a temporary restraining order in the matter of Resource Technology Corporation, Case No. 99 B 35434, Adversary No. 02 A 884, United States Bankruptcy Court for the Northern District of Illinois requiring ComEd to make payments to RTC under Rider 3 for the billing period ending May 24, 2002 for energy produced at the Pontiac Facility in excess of the maximum 10 MW configured capacity specified in the Commission's Order in Docket 97-0034.

3. In issuing the temporary restraining order United States Bankruptcy Judge Eugene R. Wedoff found that:

(x) the question of the Plant's Qualified Solid Waste Energy ("QSWEF") certification requires the resolution of issues that, under a statutory scheme, have been placed within the special competence of the Illinois Commerce Commission ("ICC"); (y) resolution of those issues is outside the Court's conventional experience; and (z) resolution falls within the ICC's specialized experience, expertise, and insight.

A copy of the Bankruptcy Court's Order is attached as Exhibit A.

4. Consistent with these findings, Judge Wedoff ruled that he "will abstain from interpreting the ICC order to determine the existence or extent of the Plant's QSWEF status."

5. So that the Commission may make determinations on these issues of state law falling within its special experience, expertise, and insight, Judge Wedoff granted ComEd relief from the automatic stay in the RTC bankruptcy proceeding to seek a declaratory ruling or other relief from the Commission concerning ComEd's obligations under the Illinois Public Utilities Act, the Order in Docket 97-0034 and ComEd's Rider 3 to make payments to RTC under Rider 3 for energy produced at the Pontiac Facility in excess of the maximum 10 MW configured capacity specified in the Commission's Order in Docket 97-0034.

6. Judge Wedoff has scheduled a preliminary injunction hearing in the RTC Bankruptcy for July 9, 2002 to consider whether to extend the Court's order with respect to payments for energy produced at the Pontiac Facility. It is likely that the Court will continue to require ComEd to pay for all energy generated by the Pontiac Facility under Rider 3. In view of RTC's bankruptcy filing, continued payment for energy purchased from the Pontiac Facility under Rider 3, should it later be determined by the Commission that RTC is only entitled to the Retail Rate up to 10 MW, will create the very substantial likelihood that ComEd will be unable to recover for the excess Rider 3 payments. Prompt resolution of this matter is important to minimize ComEd's exposure for excess payments to RTC and to maintain the integrity of the tax credit program under Section 8-403.1 of the Act.

7. Because the Commission alone may make the critical determinations concerning the state law issues on which ComEd's Rider 3 payments depend, it is necessary that the Commission issue a declaratory ruling prior to the Bankruptcy Court's preliminary injunction hearing on July 9th or as soon thereafter as possible.

8. ComEd seeks a declaratory ruling in this matter on an emergency basis so that the Commission's determination will be available to Judge Wedoff in the RTC Bankruptcy Proceeding at the July 9, 2002 preliminary injunction hearing or as soon thereafter as possible.

WHEREFORE, Commonwealth Edison Company respectfully requests that this emergency motion be granted and that the Illinois Commerce Commission issue, by July 9, 2002 or as soon thereafter as possible, a declaratory ruling determining ComEd's obligations under the provisions of Article IX of the Illinois Public Utilities Act, including 220 ILCS 5/9-102, 103, 104, 201, 240 and 241 to pay the Retail Rate under ComEd's Rider 3—Qualified Solid Waste Energy Facility Purchases to Resource Technology Corporation for purchases of energy from the Pontiac Facility in quantities that are in excess of that facility's 10 MW configured capacity specified in the Commission's Order in Docket 97-0034 dated October 8, 1997, or for such other type and manner of relief as the Commission deems appropriate clarifying ComEd's obligation to pay the Retail Rate to Resource Technology Corporation for energy generated at the Pontiac Facility in excess of 10 MW.

Dated: July 5, 2002

Respectfully submitted,
Commonwealth Edison Company

By: _____
One of the attorneys for
Commonwealth Edison Company

Paul F. Hanzlik
John L. Rogers
FOLEY & LARDNER
Three First National Plaza
70 West Madison, Suite 4100
Chicago, Illinois 60602
(312) 558-6600

Anastasia M. O'Brien
Associate General Counsel
EXELON BUSINESS SERVICES CORPORATION
10 S. Dearborn St.
Suite 3500
Chicago, Illinois 60603
(312) 395-5400